

**Letter of Findings: 04-20130405**  
**Use Tax**  
**For Tax Years 2009-2011**

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**ISSUE**

**I. Use Tax—Imposition.**

**Authority:** [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-3-5](#); [IC 6-8.1-5-1](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the assessment of use tax on certain purchases.

**STATEMENT OF FACTS**

Taxpayer is a business with operations in several states. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on some tangible personal property ("TPP") at the time of purchase during the tax years 2009, 2010, and 2011. The Department therefore issued proposed assessments for use tax and interest for those years. Taxpayer protested the proposed use tax assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Use Tax—Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of use tax on some of its purchases of TPP during the audit years of 2009, 2010, and 2011. The Department determined that, on certain purchases of TPP, Taxpayer's Kentucky-based vendor had charged Kentucky sales tax at six percent, while Indiana's sales and use taxes were seven percent. The Department gave Taxpayer credit for the six percent Kentucky sales tax already paid and imposed Indiana use tax on the one percent difference from Indiana's seven percent rate. Taxpayer protested that it had already paid sales tax. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by [IC 6-8.1-5-1\(c\)](#).

Sales tax is imposed by [IC 6-2.5-2-1](#), which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
  - (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.
- (Emphasis added).

Use tax is imposed under [IC 6-2.5-3-2\(a\)](#), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Also of relevance is [IC 6-2.5-3-5](#), which provides:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

Therefore, if a person properly paid sales tax to another state, under [IC 6-2.5-3-5](#), the Department will give a credit in the amount of the other state's sales tax against the amount of Indiana use tax due. In this case, the Department did just that. Therefore, while Taxpayer is correct that it paid sales tax at the time of purchase, that sales tax was Kentucky's six percent tax. Indiana's seven percent use tax was reduced by the six percent Kentucky sales tax, resulting in a one percent Indiana use tax imposition on those purchases. The Department correctly applied [IC 6-2.5-3-5](#). Taxpayer has not met the burden of proving the proposed assessments wrong, as required by [IC 6-8.1-5-1\(c\)](#).

**FINDING**

Taxpayer's protest is denied.

